

**THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MARYLAND
(GREENBELT DIVISION)**

| | | |
|-----------------------|---|-------------------------------|
| In re: |) | |
| |) | |
| MARK KOTLARSKY |) | Case No. 13-12002-WIL |
| |) | Chapter 7 |
| Debtor. |) | |
| |) | |
| |) | |
| JANET M. NESSE |) | Adversary No. 13-00424 |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| ALLA MARCHENKO |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

**NOTICE OF TRUSTEE'S MOTION FOR APPROVAL OF COMPROMISE OF
CONTROVERSY PURSUANT TO FED. R. BANKR. P. 9019**

TO ALL PARTIES IN INTEREST:

PLEASE TAKE NOTICE that Janet M. Nesse ("Trustee"), the Chapter 7 Trustee of the bankruptcy estate of Mark Kotlarsky (the "Debtor"), has filed a Motion for Approval of Compromise of Controversy Pursuant to Fed. R. Bankr. P. 9019 (the "Motion"). The Motion asks the Court to approve a settlement (the "Settlement") reached between the Trustee and the Debtor.

On July 24, 2013, the Debtor filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. As of the Petition Date, the Debtor owned real property located at 7400 Heartleaf Circle, Laurel, MD 20707 (the "Property"). The Property was encumbered by three liens. The first lien was held by Wells Fargo Bank in the amount of no less than \$300,000.00. The second lien was held by Alla Marchenko ("Ms. Marchenko") in the amount of approximately \$39,868.50. The mortgage held by Ms. Marchenko, the Debtor's girlfriend, was entered into on June 27, 2012 and was recorded on June 29, 2012, less than one year prior to the Petition Date.

On June 14, 2013, the Trustee filed a Motion for Authority to Sell Real Property Free and Clear of Any and All Liens and Interests Pursuant to 11 U.S.C. § 363, which this Court granted by Order entered on July 24, 2013. On or about October 10, 2014, the Trustee closed on the sale of the Property for \$401,000.00. After payment of the costs of sale and county taxes, the total amount of proceeds forwarded to the Trustee was \$70,977.34. The Debtor asserted his homestead exemption, resulting in net proceeds in favor of the bankruptcy estate in the amount of approximately \$49,352.34.

On July 24, 2013, in the matter captioned *Janet M. Nesse v. Alla Marchenko*, Adversary No. 13-00424 (the “Adversary Proceeding”), the Trustee filed a Complaint to Determine Validity, Priority and Extent of Lien of Alla Marchenko, to Avoid and Recover Preferential Transfer, and to Avoid and Recover Fraudulent Transfer (“Complaint”). The Trustee alleged, among other things, that Ms. Marchenko’s lien was preferential and/or a fraudulent conveyance.

In addition to the dispute concerning the validity, extent and priority of Ms. Marchenko’s lien against the Property, the Trustee and the Debtor also have a dispute concerning approximately \$41,148.55 received by the Trustee from the bankruptcy estate of Silver Spring Family Medical Center, LLC (Case No. 10-36319-TJC). The Debtor asserts that the funds received from the Silver Spring Family Medical Center, LLC estate are traceable to a note payable to the Debtor on account of moneys loaned from Mr. Kotlarsky’s pension plan, and are therefore exempt under applicable law. The Trustee disputes that the pension plan is in good standing or that the funds received originated from the profit sharing plan in the first instance. The Trustee asserts that funds received from the bankruptcy estate of Silver Spring Family Medical Center, LLC are not exempt.

The Trustee is holding approximately \$94,424.67 from the sale of the Property, funds received from the Silver Spring Family Medical Center bankruptcy estate, and funds received from PNC Bank. At the conclusion of a mediation between the parties, the parties reached an agreement resolving all issues, subject to bankruptcy court approval.

The terms of the Settlement are as follows:

- a. The Bankruptcy Estate shall retain \$40,000.00 from the funds the Trustee received from the proceeds of the sale of the Property and from the funds received from the bankruptcy estate of Silver Spring Family Medical Center, LLC.
- b. Subject to bankruptcy court approval, the Bankruptcy Estate shall pay all mediation fees and costs incurred by Patrick J. Kearney in the amount of \$2,218.98.
- c. The Bankruptcy Estate shall disburse approximately \$37,970.00 to Ms. Marchenko and \$6,454.67 to the Law Offices of Mark Kotlarsky, Esq. Pension Plan.
- d. The Bankruptcy Estate shall release all claims to any other loan repayments due to the Debtor from the Silver Spring Family Medical Center, LLC.

- e. The Bankruptcy Estate shall abandon any interest she has in the matter captioned *Mark Kotlarsky v. Deborah Isaacs*, case No. 050200152992014, pending in the District Court for Prince George's County, Maryland.
- f. The Debtor shall appear at the trial in the matter captioned *Mark Kotlarsky v. Sohrab Nabavi*, case No. CAL11-29751, pending in the Circuit Court for Prince George's County, Maryland.
- g. All other claims and actions shall remain property of the bankruptcy estate.
- h. Upon approval of this Motion, the Adversary Proceeding shall be dismissed with prejudice.

Because of the delay, uncertainty and expense in litigating the Adversary Proceeding and in determining the source and qualification of the Pension Plan, the Trustee believes the proposed Settlement is in the best interest of the estate and its creditors.

This Settlement is subject to the approval of the Court after notice to all creditors entitled to such notice. The Trustee believes that the Settlement on the terms stated herein is fair and reasonable and is in the best interests of the estate and should be approved. A copy of the Motion for Approval of Compromise of Controversy Pursuant to Fed. R. Bankr. P. 9019 will be mailed to any party who requests one from the undersigned.

PLEASE TAKE NOTICE THAT WITHIN 21 DAYS AFTER THE DATE OF THIS NOTICE, YOU MUST SERVE A WRITTEN OBJECTION TO THE MOTION IF YOU INTEND TO OBJECT TO THE COMPROMISE, TOGETHER WITH THE PROPOSED ORDER REQUIRED BY LOCAL BANKRUPTCY RULES. ANY OBJECTION AND PROPOSED ORDER MUST BE FILED WITH THE CLERK, U.S. BANKRUPTCY COURT, SUITE 300, U.S. COURTHOUSE, 6500 CHERRYWOOD LANE, GREENBELT, MARYLAND 20770, AND SERVED BY DELIVERY OR BY MAILING A COPY TO THE UNDERSIGNED. THE OBJECTION MUST CONTAIN A COMPLETE SPECIFICATION OF THE FACTUAL AND LEGAL GROUNDS UPON WHICH IT IS BASED. YOU MAY APPEND AFFIDAVITS AND DOCUMENTS IN SUPPORT OF YOUR OBJECTION.

IF YOU FAIL TO FILE A TIMELY OBJECTION, THE MOTION MAY BE GRANTED BY THE COURT WITHOUT A HEARING. THE COURT MAY GRANT THE MOTION WITHOUT A HEARING IF THE OBJECTION FILED STATES INADEQUATE GROUNDS FOR DENIAL. PARTIES IN INTEREST MAY CONTACT THE UNDERSIGNED WITH QUESTIONS.

Dated: March 23, 2015

Respectfully submitted

/s/ Janet M. Nesse

Janet M. Nesse (Fed Bar No. 07804)

Steven L. Goldberg (Fed Bar No. 28089)

McNamee Hosea Jernigan Kim Greenan & Lynch, P.A.
6411 Ivy Lane, Suite 200
Greenbelt, MD 20770
Tel: 301-441-2420
Fax: 301-982-9450
jnesse@mhlawyers.com
Counsel for Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2015, a true and correct copy of the Notice of Trustee's Motion for Approval of Compromise of Controversy Pursuant to Fed. R. Bank. P. 9019 has been furnished by first class mail, postage prepaid, upon all parties in interest entitled to notice under applicable Federal Rules of Bankruptcy Procedure and as set forth on the attached mailing matrix, including to:

Office of the United States Trustee
6305 Ivy Lane
Suite 600
Greenbelt, Maryland 20770

Mark Kotlarsky, Esquire
6 Beachside Drive
Palm Coast, FL 32137

Patrick J. Kearney
4416 East West Highway
Fourth Floor
Bethesda, MD 20814

Wells Fargo Bank, N.A.
c/o Randa S. Azzman
Samuel I. White, P.C.
611 Rockville Pike, Suite 100
Rockville, MD 20952

Paul Sweeney
Yumkas, Vidmar & Sweeney, LLC
2530 Riva Road, Suite 400
Annapolis, MD 21401

Elizabeth L. Hileman
Hileman and Associates, P.C.
7979 Old Georgetown Road
Suite 600
Bethesda, MD 20814

All Creditors and Parties-in-Interest on the attached mailing matrix.

/s/ Janet M. Nesse
Janet M. Nesse

Label Matrix for local noticing
0416-0
Case 13-12002
District of Maryland
Greenbelt
Mon Mar 23 11:54:49 EDT 2015

Alla Marchenko
7400 Heartleaf Circle
Laurel, MD 20707-9434

Chase
P.O. Box 15153
Wilmington, DE 19886-5548

Dunes Utility Division
5000 Utility Division
5000 Palm Coast Pkwy, SE
Palm Coast, FL 32137-8052

Internal Revenue Service
Dept. of Treasury
Philadelphia, PA 19154

Maryland Department of Health
P.O. Box 13045
Baltimore, MD 21203-3045

Neil R. Gross & Co, Inc.
1323 Rhode Island Avenue, NW
Washington, DC 20005-3701

PNC Bank
3232 Nexmore Drive
Miamisburg, OH 45342

Robert H. Hillman
Samuel I. White, PC
611 Rockville Pike
Rockville, MD 20852-1130

The Hartford
P.O. Box 2907
Hartford, CT 06104-2907

Fidelity Investments
POB 770003
Cincinnati, OH 45277-0070

Bank of America
P.O. Box 407090
Ft Lauderdale, FL 33340-7090

Comptroller of Maryland
Revenue Administration Division
Annapolis, MD 21411-0001

Fidelity Investments
100 Crosby Parkway
Covington, KY 41015-4399

Legal Link, Inc
c/o Marc Youngelson
197 Highway 18
Suite 104
East Brunswick, NJ 08816-1469

Merrill Communications LLC
One Merrill Circle
St. Paul, MN 55108-5267

Ocean Hammock HOA, Inc.
5431 A1A South
St. Augustine, FL 32080-7194

Patient First
P.O. Box 5411
Glen Allen, VA 23058-5411

Star Med
P.O. Box 4356
Wilmington, DE 19807-0356

(p)TOYOTA MOTOR CREDIT CORPORATION
PO BOX 8026
CEDAR RAPIDS IA 52408-8026

Toyota Motor Credit Corporation
c/o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701

Central Maryland Urology
10710 Charity Drive
Suite 130
Columbia, MD 21044

Comptroller of the Treasury
Compliance Division, Room 409
301 W. Preston Street
Baltimore, MD 21201-2305

Health Port
925 North Point Parkway
Suite 350
Alpharetta, GA 30005-5214

MRO
P.O. Box 61507
King of Prussia, PA 19406-0907

Montgomery General Hospital
18101 Prince Phillip Drive
Olney, MD 20832-1512

Ocean Hammock Property Owners Association, I
5455 A1A South
St. Augustine, FL 32080-7111

Prince George's County
Treasurer Division
Room 1090
Upper Marlboro, MD 20772

State of Maryland DLLR
Division of Unemployment Insurance
1100 N. Eutaw Street, Room 401
Baltimore, MD 21201-2225

(p)US BANK
PO BOX 5229
CINCINNATI OH 45201-5229

Victoria Falls Community Associatio
c/o Hileman & William, P.C.
7979 Old Georgetown Road
Suite 600
Bethesda, MD 20814-2446

Wells Fargo Home Mortgage
P.O. Box 10335
Des Moines, IA 50306-0335

Zirkle Process Service
5079 N. Dixie Highway
Suite 341
Oakland Park, FL 33334-4000

Gary A. Rosen
One Church Street
Suite 802
Rockville, MD 20850-4170

Janet M. Nesse
McNamee, Hosea, et.al.
6411 Ivy Lane
Suite 200
Greenbelt, MD 20770-1405

Mark Kotlarsky
7400 Heartleaf Circle
Laurel, MD 20707-9434

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Toyota Financial Services
19001 S. Western Avenue
Torrance, CA 90501

U.S. Bank
P.O. Box 20005
4801 Frederica Street
Owensboro, KY 42304

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Victoria Falls Community Association, Inc.
c/o Hileman & Associates, P.C.
7979 Old Georgetown Rd #600
Bethesda

(u)Wells Fargo Bank,N.A.

(u)Bank of America
INVALID ADDRESS PROVIDED

(d)Toyota Motor Credit Corporation
c o Becket and Lee LLP
POB 3001
Malvern, PA 19355-0701

(d)Toyota Motor Credit Corporation
c/o Becket and Lee LLP
POB 3001
Malvern PA 19355-0701

(u)Wells Fargo Bank, N.A.
INVALID ADDRESS PROVIDED

(d)Alla Marchenko
7400 Heartleaf Circle
Laurel, MD 20707-9434

End of Label Matrix
Mailable recipients 35
Bypassed recipients 7
Total 42